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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 911

ARCH R. EVERSON,
Appellant,

VERSUS

BOARD OF EDUCATION OF THE TOWNSHIP OF EWING, ET AL.,
Appellees.

Appeal from the Court of Errors and Appeals of the State of New Jersey.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

FRED S. LEBLANC,
Atty. Gen. of Louisiana,

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To the Honorable, the Supreme Court of the United States:

The undersigned, as Attorney General of the State of Louisiana, respectfully moves the Court for permission to file the following brief as amicus curiae herein for the reason that this case involves the right of a state to furnish free transportation to children attending private and

parochial schools, as well as public schools, and that the final decision in this case may affect the State of Louisiana, whose legislature has authorized the parish school boards of the state to furnish such transportation to the children of the state attending not only the public schools but also such private and parochial schools as may be approved by the State Board of Education. Louisiana Act 100 of 1922, Sec. 29, as amended by Act 185 of 1944; Louisiana Constitution, Art. XII, Sec. 7.

The attorneys for the appellees have consented in writing to the filing of a brief by the undersigned.

FRED S. LE BLANC,
Attorney General of Louisiana
Amicus Curiae.

Baton Rouge, Louisiana
October 11, 1946.

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BRIEF IN SUPPORT OF APPELLEES' POSITION.

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May It Please the Court:

The importance of this case to the State of Louisiana is that, under the provisions of Section 29 of Act 100 of 1922, as last amended by Act 185 of 1944, the school boards of the several parishes of the State of Louisiana are authorized "to provide transportation for children attending *any* school approved by the State Board of Education and living more than one mile from such a school of suitable grade;***." (Emphasis mine).

It is provided in the last paragraph of Section 7 of Article XII of the Constitution of Louisiana, adopted in 1921, that the State Board of Education "shall have authority to approve private schools and colleges, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State."

The parish school boards under this authority are providing transportation for school children attending private and parochial schools, and their constitutional right to do so has been taken for granted by Louisiana school authorities, as well as by the office of the Attorney General of Louisiana, since the kindred cases of *Borden v. Louisiana State Board of Education*, 168 La. 1005, 123 So. 655, 67 A.L.R. 1183, and *Cochran v. Louisiana State Board of Education*, 168 La. 1030, So. 664, *affirmed, 281 U. S. 370, 50 S. Ct. 335, 74 L. Ed. 913*, were decided.

These cases were concerned with the furnishing, free of cost to the school children of the State of Louisiana attending public, private or parochial schools, of school books under the provisions of Act 100 of 1928 and Act 143 of 1928. In neither case did the State Supreme Court find anything repugnant to either the State or the Federal Constitutions. The Cochran case was appealed to the Supreme Court of the United States and there it was held by a unanimous decision that these legislative acts did not offend the Federal Constitution because the taxing power of the state was being used for a public purpose and that:

> "The legislation does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method comprehensive. Individual interests are aided only as the common interest is safeguarded."

I can perceive no difference in principle between the constitutional right of a state to supply school books to school children generally and its right to furnish transportation for them. The children themselves in both cases are the beneficiaries and not the schools they happen to attend. That view, expressed in the Borden and Cochran cases is shared by the Supreme Courts of Mississippi and Maryland. *Chance v. Mississippi State Textbook R. & P. Board*, 200 So. 706; *Board of Education of Baltimore County*

v. Wheat, 199 Atl. 628; *Adams v. County Commissioners of St. Mary's County*, 26 Atl. 2d 377.

Respectfully submitted,

FRED S. LEBLANC,
Attorney General of the State
of Louisiana Amicus Curiae.

October, 1946.